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BENJAMIN J. WISH

Todd & Weld

As of last November, David Rosenberg was thrilled to once again be in the automotive business rather than the litigation business, reports his attorney, Benjamin J. Wish.

But, as public filings reveal, getting to that point required Wish and his colleagues at Boston's Todd & Weld to wage a war on multiple fronts to extricate Rosenberg from

his relationship with business partners who were not who they seemed.

Rosenberg, a second-generation Massachusetts auto magnate, had not been looking to sell his Prime Motor Group when he was approached by a broker representing a subsidiary of GPB Capital Holdings.

Rosenberg subsequently agreed to sell 90 percent of his interest in Prime Motor Group. But he intended to remain very much involved in the dealerships' day-to-day business. The auto manufacturers with whom he had built trusted relationships — as his father, Ira, had before him — wouldn't have it any other way.



BENJAMIN J. WISH (LEFT) AND CLIENT DAVID ROSENBERG. BY MERRILL SHEA

But no sooner was their partnership forged did Rosenberg begin to figure out that all was not right with GPB. Rosenberg alleged that he first reported internally “massive past, ongoing and material financial improprieties” he had discovered. When that failed, he blew the whistle to the Securities and Exchange Commission.

He tried to make a break from GPB, exercising a “put option” to sell his stake in the business. The only problem: GPB failed to deliver the first of four \$5.9 million payments he was due.

Rosenberg's reward for reporting the alleged financial misconduct, according to the amended

complaint he eventually filed, was to have his business partners fire him in retaliation for his whistleblowing.

Rosenberg was far from the only person to rue the day GPB Capital came on the scene.

The first shoe to drop was an administrative complaint filed by the enforcement section of the Securities Division of

the Secretary of State's Office on May 27, 2020.

In February 2021, an indictment was unsealed in federal court in Brooklyn charging GPB Capital's founder, owner and CEO and two associates with securities fraud, wire fraud and conspiracy.

In both cases, GPB was alleged to have engaged in a Ponzi scheme, making monthly distribution payments from other investors' funds to mislead investors about how much revenue two of GPB's investment funds were generating.

Thanks to Wish and his colleagues, Rosenberg's story had a successful conclusion. In November, courtesy of an SEC filing, news

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of the \$30 million settlement Wish and his colleagues had achieved on Rosenberg's behalf became public.

But getting to that point was anything but easy.

Q. What claims did you bring against GPB and its principals?

A. Noting at the outset that everything I'm able to share has been alleged in public filings, the most straightforward part was the breach of contract for the put option and the implied covenant of good faith and fair dealing, where [Rosenberg] had a categorical right to be bought out of the business for upwards of \$23 million, and the company had not paid a cent.

Just as clear was that, by firing Mr. Rosenberg, they severely damaged the business in which Mr. Rosenberg retained a minority ownership stake because they breached agreements with manufacturers that designate him as a dealer-operator. In other words, they dealt a very severe blow, and potentially mortal blow, to the health of the business, which amounted to a breach of fiduciary duty claim.

Q. How do we know that the rationale for firing Rosenberg was concocted and retaliatory?

A. Incredibly, there was a text message from one of the distributors of a manufacturer sending along the résumé of what one of the defendants in text called Mr. Rosenberg's replacement, months before the business claimed that Mr. Rosenberg did anything wrong at all.

Q. How did the attorney general and SEC going after GPB affect your case?

A. It provided solid corroboration for Mr. Rosenberg's allegations, but also gave the defendants a lever to seek to stop the entire case. When the indictment came down, the indicted individuals in the case, [founder, owner and CEO David] Gentile and [former managing partner Jeffrey] Lash, sought to stay the case. Every one of the corporate entities and every one of the other unindicted individuals also moved to stay the case.

That resulted in a firestorm of briefing and an argument before [Superior Court] Judge [Maynard M.] Kirpalani.

The court denied the motion to stay by all the entities and the unindicted individuals and granted it solely as to the indicted individuals.

Q. What other challenges did you face?

A. As is clear in our briefing throughout the case, our view of the other side's strategy was "delay, delay, delay and delay some more." That included initially, at the beginning of COVID-19, refusing to engage in remote depositions.

The number of discovery motions overall that were filed in this case was wild. It was a more-than-two-year-old case at the time it was settled, and we had been forced to file all manner of discovery motions in Massachusetts and across the country.

I don't know if it was an eight- or nine- or 12-ring circus, but we had the Massachusetts action, we had

our employment arbitration, eventually we had the New York lawsuit, and then we had motion practice on third-party discovery all over the country – in New Jersey, in Michigan, in California, in New York.

Q. What helped turn the corner to get this case resolved?

A. While I cannot guess what ultimately led to the resolution of the case, there are a few data points. We had a hearing teed up for a number of critical motions on which we expected to prevail, including to at long last depose the CEO and CFO and really look under the hood of what was happening at the business. We also at that time had understood from SEC filings that they were seeking to sell the network of car dealerships, and ultimately did sell to Group One.

Q. What will you remember most about this case?

A. What I will remember most about this case is what a privilege it has been to represent David Rosenberg, someone who is an incredibly successful entrepreneur and businessman but also a person who, when he saw what he understood to be serious financial misconduct – and frankly, at peril to himself – had the courage to stand up inside an entity that he had relatively recently joined as CEO and president and then, when push came to shove, went to the SEC. It's rare that you get to represent someone who has so much to fight for, so much at stake, so clearly was doing the right thing, and deserved to win.

—Kris Olson